

To: deanna  
From: brewster@wais.com (Brewster Kahle)  
Subject: print and save  
Cc:  
Bcc:  
X-Attachments:

>Date: Fri, 22 Dec 1995 17:21:17 -0500

>From: KGillotti@aol.com  
>To: Brewster@wais.com  
>Subject: Letter

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>Mr. Brewster Kahle  
>WAIS, Inc.  
>690 5th Street  
>San Francisco, CA 94107-1517

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>  
>Dear Brewster:  
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>

>This is to confirm our agreement regarding the transfer of the WAIS, Inc.  
>(iWAISi) software business to a new company you will be establishing, and  
>the arrangements we have made regarding America Online Inc.'s (iAOLi or the  
>iCompanyi) interest in, and your employment by, that new company.

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>Severance Terms and Conditions:

>  
>I. New Corporation

> A. The Company consents to your formation of a new corporation, the  
>principal business of which will be (i) commercializing the existing WAIS  
>software technology and (ii) providing support and maintenance services  
>under all of the existing (as well as any future) maintenance and support  
>service contracts (iNewcoi) and to the employment by Newco of up to four  
>employees currently employed by the Company, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, and  
>\_\_\_\_\_, subject to and conditioned on the performance of your obligations  
>under this Letter Agreement.

>  
> B. All of the authorized capital stock of Newco will be issued or reserved  
>as follows: 34% to you, 33% expressly reserved for issuance under an employee  
>stock option plan, and 19.9% to be issued to AOL upon formation of Newco and  
>13.1% to be reserved for issuance to AOL pursuant to AOL's option to acquire  
>up to 13.1% in the future at a nominal price.

>  
> C. You will cause Newco to authorize AOL to designate one person to the  
>Board of Directors of Newco, for the duration of the period that AOL  
>continues to hold not less than 60% of aforesaid stock or option to acquire  
>stock in Newco.

>  
> D. You hereby assume all current and future obligations and liabilities  
>under each maintenance and support contract to which WAIS is currently a  
>party, or for which WAIS is in any manner obligated, including but not  
>limited to the existing contract with the White House, and the contracts with  
>\_\_\_\_\_. To the extent that any such  
>contract is not assignable you hereby indemnify AOL, its employees, officers,  
>directors and other representatives for all such obligations and liabilities

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>which AOL, using commercially reasonable efforts, is not able to divest or  
>settle for less than \$1,000 within six months of the date hereof. Upon the  
>date of their employment by Newco, you will assume all liabilities with  
>regard to any obligations accrued after such date to the up to 4 employees to  
>be hired pursuant to Section IA above.

&gt;

## &gt;II. Software

&gt;

> A. The Company agrees to transfer to you its right, title and interest in  
>and to all existing proprietary WAIS software, provided that you grant to AOL  
>a fully paid, world wide, perpetual, and unrestricted license to the same  
>such software, including all enhancements, modifications, upgrades, and  
>functional equivalents, and the unrestricted right to sublicense and  
>distribute the same, and you hereby so grant the foregoing to AOL effective  
>as of the same date AOL grants and delivers to you the source code and  
>related documentation to consummate the above described transfer.

&gt;

> B. The Company acknowledges and agrees that it has no rights and will claim  
>no right, title or interest in software or any other product developed by  
>Newco after the date of the closing of the Newco transaction contemplated by  
>this letter, without limiting or forfeiting any of the Company's above  
>described license to use any WAIS software. With respect to products or  
>services offered by Newco in the future, AOL shall be entitled to most  
>favored customer treatment on all matters including price and availability of  
>services.

&gt;

## &gt;III. Non-Compete

&gt;

> A. That certain Non-Competition and Non-Solicitation Agreement entered into  
>by and between AOL, WAIS (formerly known as AOL Acquisition Corp.) and you as  
>of May 23, 1995 (the "Non-Compete Agreement"), a copy of which is attached  
>hereto, remains in full force and effect, subject to the following  
provisions. The parties hereby agree that the Non-Compete Agreement is  
amended by (i) AOL's agreement to allow you to conduct the business of Newco  
as contemplated in this Letter Agreement and (ii) any exception to the  
Non-Compete Agreement subsequently agreed to in writing by AOL pursuant to  
the process set forth below in this Letter Agreement, and that in the event  
of a conflict between the provisions of the Non-Compete Agreement and the  
provisions of this Letter Agreement the provisions of this Letter Agreement  
shall prevail.

&gt;

> B. You will provide AOL with written notice of not less than thirty days,  
prior to any action by you or Newco which would otherwise constitute a  
violation of the Non-Compete Agreement but for this Letter Agreement. In the  
event that AOL, in its reasonable discretion, decides to waive the violation  
of the Non-Compete Agreement, it will so notify you in writing not more than  
fifteen days after receiving such notice from you. Reasonable discretion, as  
used herein, shall include, without limitation, consideration of whether AOL  
or its affiliates would likely incur substantial economic injury or damage to  
its reputation as a result of your competitive conduct. In the event that AOL  
selects not to waive the violation, it shall so notify you within such fifteen  
day period, and its decision shall be final, and you hereby agree not to  
contest or dispute such decision in any way whatsoever.

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## &gt;IV. Stock Options

&gt;

> A. Notwithstanding any agreement you have with AOL regarding stock options,  
which is hereby amended as follows, or the terms of AOL's 1992 Employee  
Director and Consultant Stock Plan (the "1992 Plan") to the contrary, AOL  
hereby agrees that 25% of the total number of your AOL options would  
otherwise have vested over a four year period but for your termination of  
employment shall vest on May 23, 1996, pursuant to and in consideration for

>a Consultant Agreement which you agree to enter into with AOL, which shall  
>provide that you will make available to AOL reasonable consulting services  
>within your area of expertise until May 23, 1996-. All other AOL options  
>which were granted to you hereby lapse.

>  
>      B. With respect to the four AOL employees you are taking with you to Newco,  
>AOL hereby agrees to continue the vesting of all AOL stock options granted to  
>such employees under the 1992 Plan until May 23, 1996, provided that such  
>employees enter into a Consultant Agreement similar to the one you will enter  
>into requiring them to render consulting services to AOL until such vesting  
>date. AOL stock options which would not otherwise vest by May 23, 1996 will  
>lapse upon each such employeesí termination of employment with AOL.

>  
>In consideration for the terms described above, you agree:

>  
>(i)    Not to do or say anything to criticize or damage the reputation of the  
>Company, or to harm the Companyís management or normal, ongoing business  
>operations unless required to give testimony during legal proceedings.

>  
>(ii)   To release and forever discharge the Company, and any affiliated or  
>successor corporation or other entity, and all of their officers, directors  
>and employees (collectively, the iAffiliated Companiesí) from any and all  
>losses, expenses, claims, rights and entitlements, whether known or unknown,  
>that you have now or may later claim to have had against the Affiliated  
>Companies, including, without limitation, those arising out of your  
>employment or termination of employment with the Company, excluding only your  
>rights to any vested pension benefits. This includes, but is not limited to,  
>any claims for back pay, for reinstatement or for recovery of any losses or  
>other damages to you or your property based on any alleged violation of Title  
>VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000e et seq  
>(prohibiting discrimination on account of race, sex, color, national origin  
>or religion); the Age Discrimination in Employment Act of 1967, 29 U.S.C.  
>Section 621 et seq (prohibiting discrimination on account of age); the  
>Americans with Disabilities Act of 1990, 42 U.S.C. Section 12101 et seq  
>(prohibiting discrimination on account of disabilities); or any similar  
>local, state, or federal laws.

>  
>(iii)  Not to pursue any individual claim against the Affiliated Companies  
>(except for a breach of this Letter Agreement). You agree not to file a  
>lawsuit in any local, state or federal court or an individual monetary claim  
>with any local, state or federal agency against the Affiliated Companies as a  
>result of your employment or the termination of your employment with the  
>Company.

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>  
>We contemplate entering into a Consulting Agreement, which will reflect the  
>matters described above and contain the typical provisions regarding the  
>termination of your employment with AOL, and the necessary documents  
>regarding Newco in the next several weeks. If you have any questions about  
>this Letter Agreement please call me.

America Online, Inc.

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By: \_\_\_\_\_

Lennert J. Leader  
Senior Vice President

WAIS, Inc.:

By: \_\_\_\_\_

Michael M. Connors

>Agreed:

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deanna,12/22/95 2:41 PM,print and save

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>Brewster Kahle

Date

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